Limitation Ordinance. When any of these elements is lacking no title by adverse possession can ripen." (See *Rustomji* on Law of Limitation, 5th edition, page 1369).

In *Ejas Ali Qidwai and others* v. *Special Manager, Court of Wards, Balrampur Estate and others*,[6] Sir Shadi Lal said at page 56:—

"The principle of law is firmly established that a person, who bases his title on adverse possession, must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to a denial of his title to the property claimed."

And in the case of *Corea* v. *Appuhamy* [7] at page 236, Lord McNaughton said that where the possession of the defendant is in its inception merely permissive, it is not possible for him to put an end to that possession by any secret intention in his mind. There must be an ouster. Was there then in 1929 an act on the part of Wi Chi Neo amounting to such an ouster? The answer to that is given by her own son, the 1st defendant. He said in cross-examination:—

"My mother was not in exclusive possession of 55, Heeren Street. There were always other members of the family living there. Wi Chi Neo and Aw Yeo Neo regarded the house as an ancestral house. When my father died my mother was allowed to stay as she was the daughter-in-law of my grandfather. No letter to the trustees that she was occupying in a capacity other than that in which she first occupied the house. Nothing to show she was occupying the house other than as beneficiary."

The only indication that she was holding the premises other than as a licensee was in 1958, when she sent a reply (P.8) through her solicitor to the plaintiffs' letter (P.7), claiming adverse possession.

The defence of limitation therefore fails.

Finally, it was objected that the plaintiffs had failed to prove their title to the property. On this point it is to be observed that it is specifically pleaded in the statement of claim that the plaintiffs are the trustees of the will of the deceased who was seized in fee of the premises and are entitled to the posssession thereof. This was never put in issue. Alternatively, in view of paragraph 2 of the defence, the 1st defendant cannot be heard to say that the plaintiffs had no title when she is alleging adverse possession against them. This objection fails.

There must be judgment for the plaintiffs for possession of the lands, hereditaments and messuages, that is to say, all that certain part or parcel of ground with the brick house and outhouses thereon erected No. 55, Heeren Street, Malacca, comprised and described in a Deed of Indenture, 11th day of May, 1889, Registered No. 195 of 1889, mesne profits at $200 per mensem from today until the date of possession and costs of this action.

Judgment for the plaintiffs.

Solicitors: *Shearn, Delamour & Co.; Sault, Keith Sellar & Co.*

AYAVOO v. PUBLIC PROSECUTOR

[A.Cr.J. (Ong Hock Thye F.J.) January 17, 1966]

[K.L. — Criminal Appeal No. 69 of 1965]

Criminal Law and Procedure — Police supervisee — Breach of condition to remain indoors — Mens rea — Prevention of Crime Ordinance, 1959, s. 15(2) and (4).

The appellant had been convicted of failing to comply with a condition to remain indoors between the hours of 8 p.m. and 6 a.m. an offence under section 15(4) of the Prevention of Crime Ordinance, 1959. The facts were that on his way home on a bicycle he wobbled while crossing a wooden bridge and fell off the bicycle. He was found at 11.30 p.m. bleeding by the roadside, with one leg trapped under his bicycle and taken to hospital where he came to.

Held: as in this case the appellant was out of doors merely through the misfortune of having an accident, the conviction cannot be upheld and must be quashed.

CRIMINAL APPEAL.

Appellant in person.

Ajaib Singh (Deputy Public Prosecutor) for the respondent.

Ong Hock Thye F.J.: The appellant was tried and convicted in the sessions court at Kuala Kubu Bharu on the following charge:

"That you on 25.4.65 at about 11.30 p.m. in front of C.E.B. Office, Jalan Hamzah. Kuala Kubu Bharu, in the district of Ulu Selangor, in the State of Selangor, being a registered person as defined by section 2 of the Prevention of Crime Ordinance No. 13 of 1959, and being subject to the supervision of the police for a term of five years, w.e.f. 29.8.60, and whilst under such supervision shall remain within doors between 8.00 p.m. and 6.00 a.m. unless you obtain special permission to the the contrary from the Officer-in-Charge Police District, Kuala Kubu Bharu, did fail to comply with such restriction and that you have thereby committed an offence under section 15(2)(f) and punishable under section 15(4) of the Prevention of Crime Ordinance No. 13 of 1959."

The learned president sentenced him to the maximum term of five years imprisonment because he had previously committed two breaches of the restricted residence conditions imposed by the order of police supervision in 1961 and 1963. This appeal is against sentence only.

The simple facts of the case as presented by the prosecution and defence respectively were not challenged by the other side. The appellant had had his evening dinner at the mother's house and then left for his place of abode in good time to beat the dead-line of 8 p.m., when he had to be indoors. Having drunk a half-bottle of samsu, though still able to ride a bicycle, he proceeded safely along until at about 7.40 p.m. he wobbled while crossing a wooden bridge and fell off near the C.E.B. Station. At 11.30 p.m. he was found bleeding by the roadside, with one leg still trapped under his bicycle, by a mobile police

patrol and taken to hospital where he came to. On these facts the learned president found him guilty as charged.

With respect, I do not think the conviction can be upheld, even though the appeal is only against sentence.

Although sub-section (4) of section 15 of the Prevention of Crime Ordinance, 1959, does not contain the word "knowingly" with regard to contraventions or failures to comply with the conditions of the restrictive order imposed, *mens rea* is nevertheless the rule in all offences except in those of absolute liability. The appellant at the relevant time had every intention to get back indoors in time and no intention to commit any breach of the police supervision order to which he was subject. He was out-of-doors at 11.30 p.m. merely through the misfortune of having an accident which, together with the intoxicating liquor he had, caused him to pass out.

In the circumstances, I would not only set aside the sentence but also quash the conviction.

Sentence set aside and conviction quashed.

SUPERINTENDENT OF LANDS AND SURVEYS, SARAWAK v. AIK HOE & CO. LTD.

[F.C. (Thomson L.P., Ong Hock Thye Ag.C.J. (Malaya) and Suffian J.) January 17, 1966]

[K.L. — Federal Court Civil Appeal No. 25 of 1965]

Land laws — Acquisition of land for public purpose — Compensation — 'Market value' of land — Procedure — Land Code (Sarawak Cap. 81).

This was an appeal against the decision of the High Court which increased the compensation payable for land acquired by the Sarawak Government from $237,760 or $5,460 per acre to $607,000 or $13,900 per acre.

Held: on the facts and taking into account all relevant factors the fair market value of the land was $8,000 per acre for the first lot and $9,000 per acre for the second lot.

Cases referred to:—

(1) *Vyricherla Narayana Gajapatiraju* v. *The Revenue Divisional Officer, Vizagapatam,* [1939] A.C. 302.

(2) *Maori Trustee* v. *Ministry of Works* [1959] A.C. 1.

(3) *U. P. Government* v. *H. S. Gupta* A.I.R. 1957 S.C. 202.

(4) *Duke of Buccleuch* v. *Inland Revenue Commissioners* [1965] 3 W.L.R. 977.

(5) *Hull & Humber Investment Co. Ltd.* v. *Hull Corporation* [1965] 1 All E.R. 429.

(6) *Nowroji Rustomji* v. *The Government of Bombay* (1929), I.L.R. 49 Bom. 700.

(7) *Assistant Development Officer, Bombay* v. *Tayaballi Allibhoy Bohori* A.I.R. 1933 Bom. 361.

(8) *Collector of Nagpur* v. *Atmaram Bhagwant* A.I.R. 1925 Nagpur 292.

(9) *Nanyang Manufacturing Co.* v. *Collector of Land Revenue, Johore* [1954] M.L.J. 69.

(10) *Benmax* v. *Austin Motor Co. Ltd.* [1955] A.C. 370, 373.

(11) *Chow Yoong Hong* v. *Tai Chet Siang* [1960] M.L.J. 130.

(12) *Secretary of State for Foreign Affairs* v. *Charlesworth, Pilling & Co. and another* I.L.R. 26 Bom. 503.

FEDERAL COURT.

P. J. Mooney for the appellants.

G. S. Hill (*Stephen Yong* with him) for the respondents.

Cur. Adv. Vult.

Suffian J.: The Sarawak Government resumed under Part IV of the Sarawak Land Code (Cap. 81) 19 parcels of lands "for the purposes of residential and industrial development and other public facilities in connection with the new port of Kuching." In due course enquiries were held by the Superintendent of Lands and Surveys, First Division, Sarawak (the present appellant) to determine the compensation payable to the owners. We are not concerned with 17 parcels whose owners accepted the superintendent's award; we are only concerned with two parcels, lot No: 16178 (which I call the first lot) and lot 16179 (the second lot) whose owners, Messrs. Aik Hoe & Co., Ltd. (the present respondents) objected to the superintendent's award.

The owners are entitled by way of compensation to the market value of the lands on the agreed material date 1st April, 1960, section 60(1)(a); so the issue in this matter is simply this, what was their market value on that date. The superintendent decided it was $237,760 or about $5,460 per acre. On appeal by the owners, Harley J., in the Kuching High Court increased it to $607,000 or $13,900 per acre. The superintendent now appeals to this court.

The first lot was transferred to the owners on 11th May, 1949, at a price of $19,000, that is about $700 per acre, and the second lot on the same date at a price of $21,000, that is about $1,200 per acre. The superintendent makes nothing of these prices and rightly so, because these transactions took place long before the material date.

The following facts are not in dispute. Both lots are situate about 4 miles from the State capital Kuching a town of about 50,000 souls at the material time (the Kuching rural area had about 100,000 souls). Both lots front the Pending Road, the first lot to the north and the second to the south of that road. The first lot 25.72 acres in area is, except for about an acre, below the 10-foot contour line, and the second lot 17.82 acres in area is as to about half an acre below the 10-foot contour line and surrounds two